

No. 86-779

Supreme Court, U.S.

FILED

DEC 29 1986

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1986

EMIL F. DeLORETO and
JAMES M. DeLORETO,

Petitioners,

-vs-

CITY OF SANTA BARBARA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SIX

PETITIONERS' REPLY BRIEF

RICHARD E. RADER
Post Office Box 1447
Santa Barbara, CA 93102
(805) 962-9613

Attorney for Petitioners

6/11/87



SUPREME COURT OF THE UNITED STATES

EMIL F. DeLORETO et al.,

Petitioners,

-vs-

CITY OF SANTA BARBARA,

Respondent.

PETITIONERS' REPLY BRIEF

In an opposing "brief" that is no more than a motion [cf. Rule 22.3.], the respondent attacks the timeliness of the petition, asserting that when the timely-filed original petition was returned for resubmission in proper form its substance was changed to such an extent as to create a new petition encompassing new issues.

There is no merit to that charge.

1. The gravamen of the petition was not changed; no prejudice resulted.

In unfortunate reliance upon an

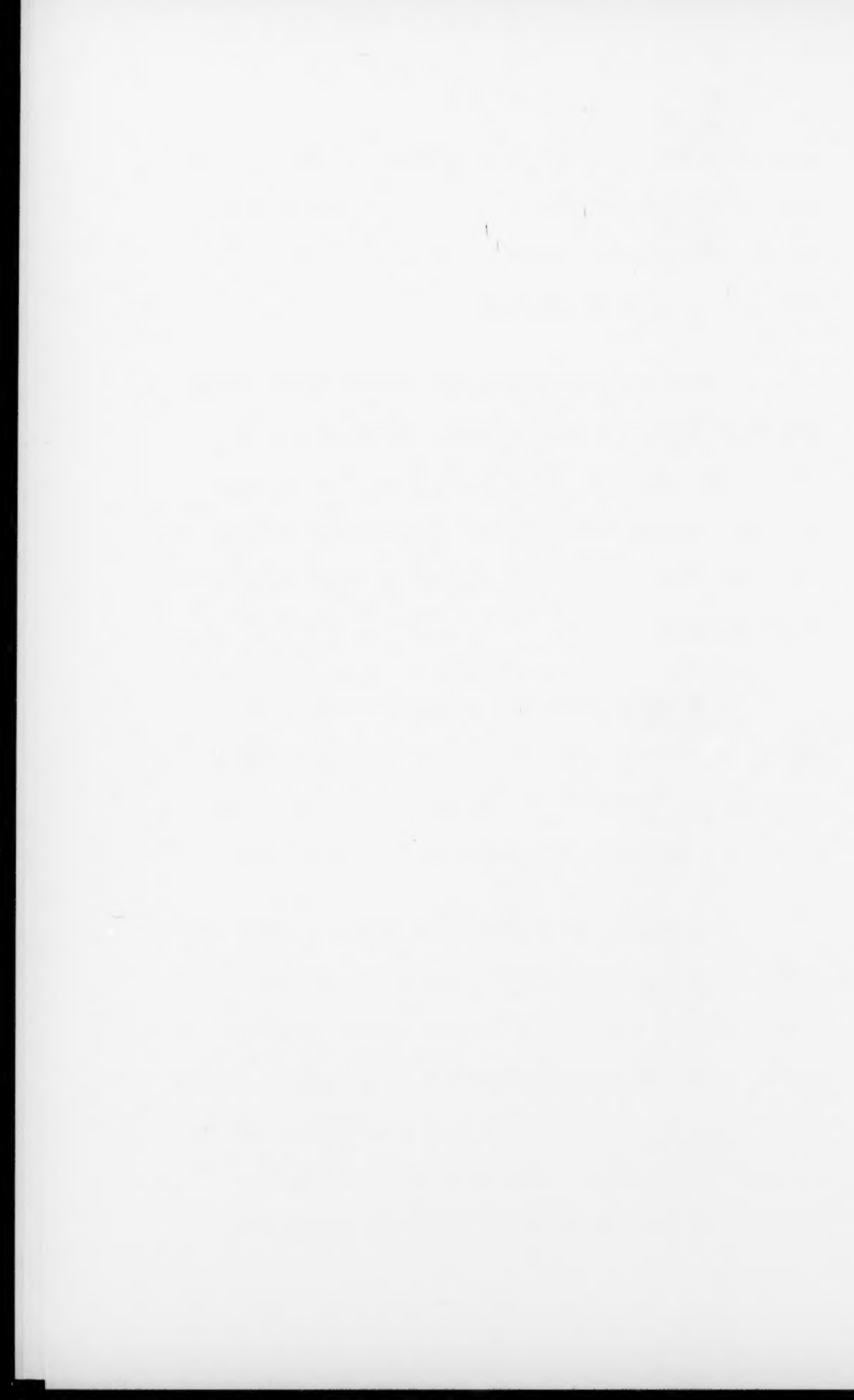


out-of-date text on procedure in this court, the original petition violated the rules in being 1½ spaced, more than 10 characters to the inch, and in format.

Merely retyping it would have added another five or six pages. Rereading it revealed certain opportunities for a more precise statement of the essential points in less space without altering the substantive content.

Simply pruning non-essential passages, however, resulted in a somewhat disjointed argument. To retain coherence and clarity, certain rephrasing was necessary.

That is all that was done. The thrust of petitioners' complaint about what happened in the state court never varied. Their central contention is and always has been that a prosecution for violation of an unconstitutional ordinance cannot be re-vitalized (reincarnated is more apt) by



merely enacting a new ordinance that meets constitutional standards. The original petition said so pointblank. The shorter version says the same thing in different words.

Respondent's assertion that the pruned petition raises new issues is either rhetoric or proof that the City still does not understand this case.

Respondent does not and can not claim that it was prejudiced or surprised by the present form of the petition. The questions presented, although restated in the interests of brevity and clarity, are unchanged, and will require consideration of the same matters.

2. Further opposition has been waived.

It is only fair that respondent be held to the same punctilious compliance with the rules required of petitioners.



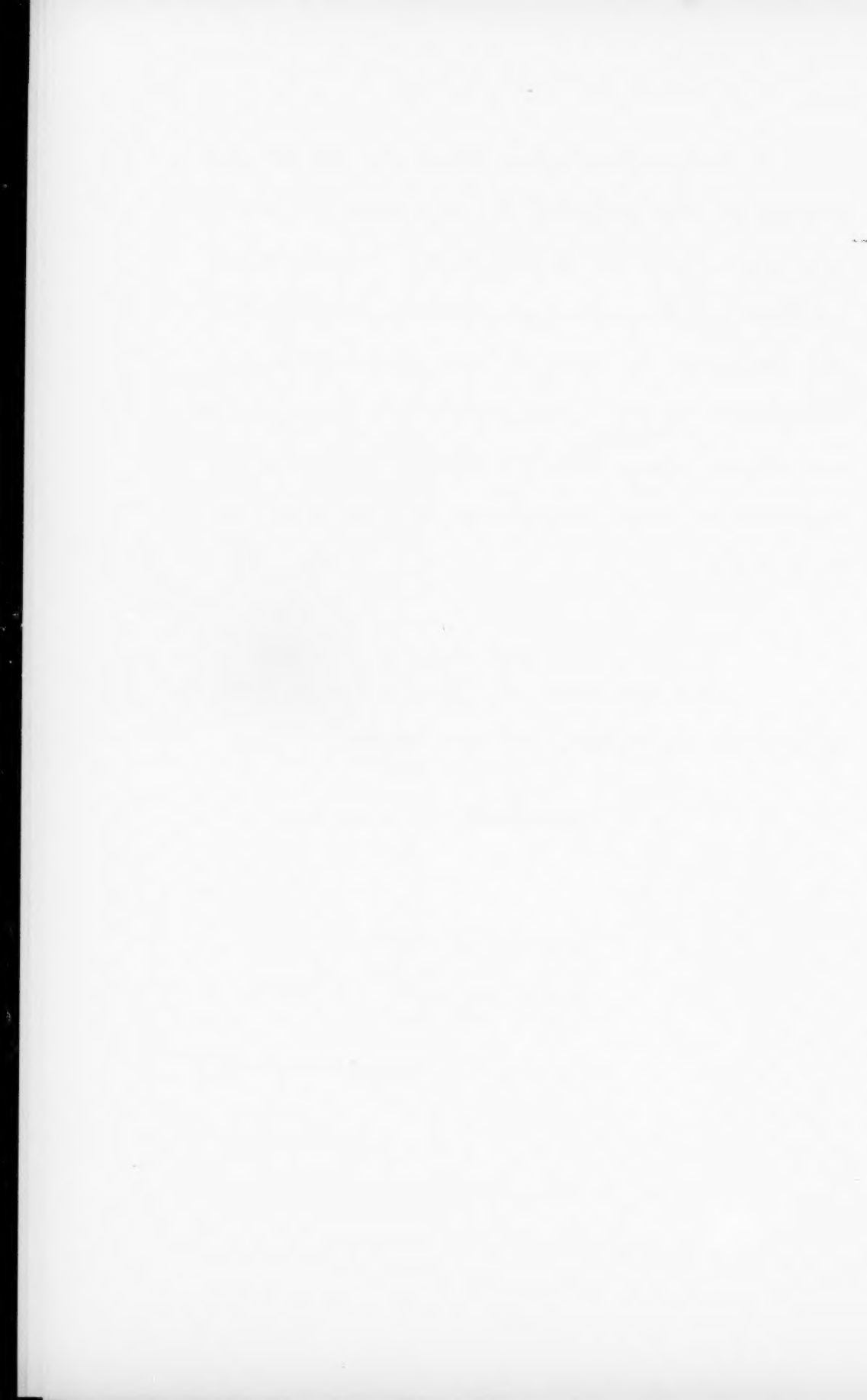
Respondent asks leave to oppose the merits of the petition if the challenge to its timeliness is unsuccessful. Rule 22.3 forbids bifurcated opposition. Respondent was required to include its jurisdictional objection in its opposing brief, along with any other opposition it wishes to present. Failure to avail itself of the opportunity waived it.

The petition was timely-filed and should be considered on its merits.

Respectfully submitted,

Richard E. Rader
Post Office Box 1447
Santa Barbara, CA 93102
(805) 962-9613

Attorney for Petitioners



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Certificate of Service

I hereby certify that on December 26,
1986 three copies of the within Petitioners' Reply
Brief were mailed to:

Steven Amerikaner
City Attorney - City Hall
Post Office Drawer P-P
Santa Barbara, CA 93101

I further certify that all parties
required to be served have been served.

Richard E. Rader
Attorney for Petitioners